THE MANITOBA HUMAN RIGHTS COMMISSION
LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

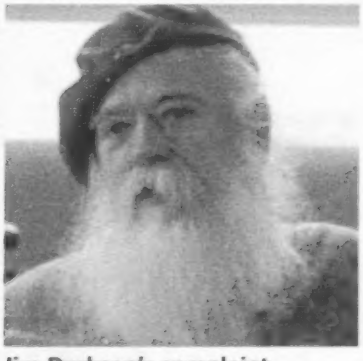
connections

Equality of Opportunity and Freedom from Discrimination

Systemic settlement remedies every person impacted by discrimination

Jim Derksen and many senior Handi-Transit users are celebrating after his human rights complaint against the City of Winnipeg reached a successful resolution.

"I am very pleased with the result," Mr. Derksen said. "I would like the public to understand that *The Human Right Code* is a strong and effective method of achieving fairness."



Jim Derksen's complaint resulted in a systemic settlement

Mr. Derksen complained that he and other seniors were discriminated against because of their disability. The City's seniors discount was available to regular transit users but not to Handi-Transit users.

Although the City did eventually make the discount available to Handi-Transit users, there were users affected over a period of years.

The resolution will enable every senior impacted to be credited for the non-discounted fare paid in the past, based on the number of trips they actually took during the relevant period. This is the first time a settlement in Manitoba has resulted in remedying every person impacted by the discrimination.

City Council ratified the settlement today and plans are underway to contact current Handi-Transit users and inform the public of the City's agreement to credit seniors.

Isha Khan, the Executive Director of the Manitoba Human Rights Commission says the Commission is very pleased that the parties were able to work together to address this issue.

"The efforts of people like Jim Derksen have resulted in a better understanding of systemic discrimination and how it can be remedied. This outcome will be beneficial to all senior Handi-Transit users in Winnipeg."

The Rights Connection

By Isha Khan - Executive Director

The Commission takes its responsibility to educate Manitobans about human rights seriously. For almost twenty years it has been offering human rights education seminars specifically for businesses. In the last few years, the Commission has seen an increasing demand for our staff to come out to businesses and offer seminars to large groups of individuals; often executive management and leadership teams.

This demand has been so encouraging and has moved us to set one of our main strategic objectives as ensuring our education programs reach all Manitobans; particularly in Northern Manitoba. Plans are underway to return to communities around Thompson, The Pas, Flin Flon and places in between.

We are looking to connect directly with more workplaces in the North and to do this we need your help. We want to hear from communities or organizations in Northern Manitoba that would like human rights training. Hearing from you helps us plan our Northern trip in the most effective way. It may also result in finding alternative ways to ensure you receive the training required.

An invitation into your workplace gives us the opportunity to promote the principle that we all have a right to be treated with dignity and to have equal opportunities. This is one of the best ways to assist businesses to approach discrimination in the workplace in a proactive way and get you thinking about inclusive and respectful work environments. It also helps bring about systemic change.

Already in 2016, on-site seminars have been arranged in several workplaces in Winnipeg and around Brandon. We look forward to hearing from more of you, and especially those in Northern Manitoba.

Please email us at hrc@gov.mb.ca.

Settlements - Fact or Perception?

In this Manitoba Human Rights case, a man made a complaint against his employer saying that he was discriminated against on the basis of his disability. He has a neurological disorder and alleged that he was laid off because of it. He is now on medication and has not experienced any difficulty since then.

The company's position was that it had to let him go because it believed that the worker and/or his colleagues could be injured due to seizures. The question is whether or not this belief was based on medical information or "perceptions?"

Initial attempts at mediation were not successful and a full investigation took place. The investigator found that there was enough evidence to show that the company's decision was based on its perception of the man's abilities or disabilities.

The investigation report was given to the Commissioners who decided to refer the complaint to an independent adjudicator to determine if the evidence supported discrimination.

The Commissioners also suggested that the man and his former employer consider a settlement discussion based on the findings of the investigator. Those discussions would be "without prejudice." Generally speaking this means that what happens in settlement negotiations stays in settlement negotiations. A settlement offer cannot be brought up in the adjudication hearing to influence how the adjudicator views the parties' positions.

There was, however, a settlement. The employee received approximately $13,000 for injury to dignity, feelings and self-respect, compensation for out of pocket expenses and lost income.

The company agreed to implement a Reasonable Accommodation Policy and provide a copy of the implemented policy to the Manitoba Human Rights Commission within a month of the settlement agreement.

Next Month in the Connections Bulletin
The Manitoba Human Rights Commission releases Guidelines on Gender Identity

What should employers take away from this settlement?

- Employers must realize that it is possible to discriminate without intending to violate the law.
- Employers should never make assumptions about someone's disability.
- Employers should understand the process of reasonable accommodation and determine how to implement it.
- Employers should make inquiries into the worker's medical practitioner to establish if that person could return to work.
- Employers should look into whether an employee could be placed on leave while gathering more medical information.

For more information about requesting medical information from employees see our Fact Sheet http://www.manitobahumanrights.ca/factsheet_medical_information.html.

For more information about Reasonable Accommodation see our sample policy or take on of our seminars. http://www.manitobahumanrights.ca/workshops.html

Celebrate Disability Employment Awareness Month (DEAM)

Disability Employment Awareness Month (DEAM) is an annual opportunity for Manitoba businesses, organizations, educational institutions, and government bodies, to take proactive steps to increase employment success for Manitobans with disabilities. Visit the DEAM Manitoba website for more information.

In August 2016, David Arnot, President of the Canadian Association of Statutory Human Rights Agencies (CASHRA), wrote to the Government of Canada recommending that October be designated National Disability Employment Awareness Month to promote the benefits of hiring people with disabilities. Provinces such as Manitoba, Saskatchewan and Ontario already have declared October Disability Employment Awareness Month, as has The United States.